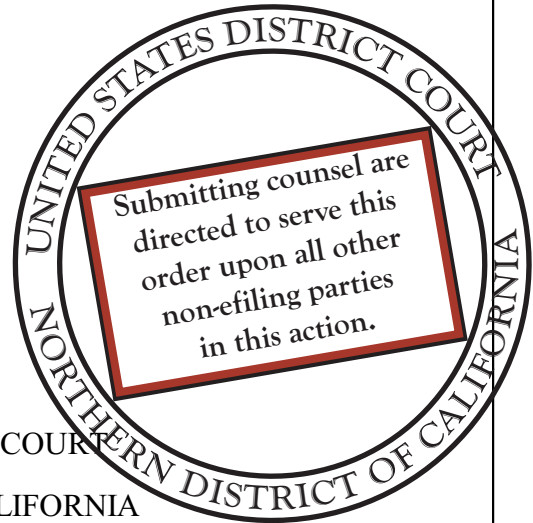


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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

DEDAN SUNNI ALI,

Plaintiff,

v.

U.S. DEPARTMENT OF EDUCATION,

Defendant.

No. C 10-2360 SI

EX PARTE APPLICATION AND
 [PROPOSED] ORDER TO CONTINUE
 HEARING ON MOTION TO DISMISS
 AND EXTEND DATES IN SCHEDULING
 ORDERS

On November 30, 2010, Defendant e-filed its Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim (“Motion to Dismiss”). (Dkt#15.) The Defendant served the Motion to Dismiss on Plaintiff at his general delivery address listed on the Court’s docket. Declaration of Juan Walker in Support of Ex Parte Application and [Proposed] Order to Continue Hearing on Motion to Dismiss and Extend Dates in Scheduling Orders (“Walker Decl.”) at ¶ 2. On December 1, 2010, the Court, *sua sponte*, continued the hearing on the Motion to Dismiss from January 14, 2011 to January 28, 2011. (Dkt#18.) On or about December 18, 2010, the Motion to Dismiss was returned to Defendant stamped, “Returned to Sender Unclaimed from General Delivery”. Walker Decl. at ¶ 3. Other than the information contained on the Court’s docket, the Defendant does not have any contact information for Plaintiff. *Id.* at ¶ 4. On December 28, 2010, the Court Clerk filed a notice indicating that its notice to Plaintiff continuing

the hearing date also was returned as undeliverable. (Dkt# 19.) However, the Clerk noted that the envelope returning the Clerk's notice contained a new address for the Plaintiff. *Id.* The Clerk updated Plaintiff's address on the Court's docket and re-mailed its notice continuing the hearing date. *Id.* Since the Plaintiff has not received the original Motion to Dismiss, Defendant intends to re-notice the Motion to Dismiss and serve it on Plaintiff at his new address.

Accordingly, in order to allow Plaintiff sufficient notice, the Defendant requests the Court continue the hearing on the Motion to Dismiss to February 18, 2011, and extend the dates in the scheduling order, so that the Initial Case Management Conference will occur on or after March 18, 2011, and the ADR Deadlines will be adjusted accordingly. Such an order is authorized under Fed. R. Civ. P. 6(b)(1), which provides discretionary authority to enlarge time "with or without motion or notice. . . ." As the Plaintiff does not have a telephone number listed on the Court's docket, Defendant is unable to ascertain whether Plaintiff objects to this request. Walker Decl. at ¶ 6.

Dated: January 12, 2011

Respectfully submitted,

MELINDA HAAG
United States Attorney

/s/
JUAN D. WALKER
Special Assistant United States Attorney
Attorneys for Defendant

[PROPOSED] ORDER


Good cause having been shown, Defendant's Ex Parte Application is hereby GRANTED. The scheduling orders are hereby modified as follows:

Motion to Dismiss Hearing: February 18, 2011 at 9:30 a.m.

Initial Case Management Conference: March 18, 2011 at ~~1:30~~ 2:30 p.m.

IT IS SO ORDERED.

Dated:


SUSAN ILLSTON
United States District Judge